

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

JOE THOMAS TUCKER, #03393-078 §
VS. § CIVIL ACTION NO. 6:05cv495
UNITED STATES OF AMERICA § CRIM. NO. 6:91cr30(1)

ORDER OF DISMISSAL

The above-entitled and numbered civil action was heretofore referred to United States Magistrate Judge Judith K. Guthrie, who issued a Report and Recommendation concluding that Movant Joe Thomas Tucker's latest motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255 should be denied. The Movant has filed objections.

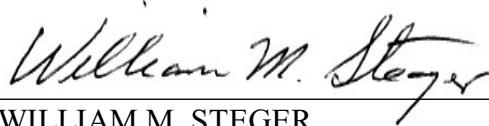
The Report of the Magistrate Judge, which contains her proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by the Movant to the Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and the objections of the Movant are without merit. He does not have a basis for collateral relief based on *United States v. Booker*, 543 U.S. 220 (2005). See *United States v. Gentry*, 432 F.3d 600 (5th Cir. 2005). He likewise had no basis to file the present successive § 2255 motion based on *Booker*. See *In re Elwood*, 408 F.3d 211 (5th Cir. 2005). He erroneously argued in his objections that he had a right to file the § 2255 motion pursuant to *Dodd v. United States*, 125 S.Ct. 2478 (2005). *Dodd* merely held that the one year limitations period for § 2255 proceedings runs from the date the Supreme Court recognizes a right and declares the right to be retroactive. *Dodd* was not concerned with *Booker*, and the Supreme Court did not make *Booker* retroactive. The objections are devoid of merit. Therefore the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

ORDERED that the Movant's motion to vacate, set aside or correct his sentence is **DENIED** and the cause of action is **DISMISSED** with prejudice. It is further

ORDERED that the Clerk of Court shall return unfiled any new § 2255 motions tendered by Joe Thomas Tucker unless he simultaneously submits an order issued by the Fifth Circuit permitting him to file a successive § 2255 motion. It is finally

ORDERED that all motions not previously ruled on are hereby **DENIED**.

SIGNED this 25th day of January, 2006.



William M. Steger
WILLIAM M. STEGER
UNITED STATES DISTRICT JUDGE